

REMARKS

The last Office Action has been carefully considered.

It is noted that claims 6-10 and 12-14 are rejected under 35 U.S.C. 103(a) over the patent to Wieczorek in view of the patent to McCall.

Applicant has thoroughly reviewed the references applied by the Examiner and compared the construction disclosed in the references with the holding device of the present invention as defined in claim 13. It is respectfully submitted that the new features of the present invention as defined in claim 13 are not disclosed in the references and can not be derived from them as a matter of obviousness.

Turning now to the references, it is further respectfully submitted that the teachings of the patents to McCall and to Wieczorek can not be combined as a matter of obviousness. The gravity lock disclosed in the patent to McCall blocks the unlocking tab portion 28, so that the unlocking tab portion 28 is not pressed and the display 8 as a result is not unlocked and can not be opened.

The cup holder disclosed in the patent to Wieczorek has no unlocking tab. In this reference the drawer 40 can be engaged with a lip 52 and pulled from its stored position into an extended position, as explained in lines 19-23 in column 5 of the patent. An unlocking tab which can lock with the gravity locking device of the patent to McCall is not disclosed in the patent to Wieczorek. On the other hand, the patent to McCall does not provide any possibility to lock the display 8 directly with a gravity locking device. A combination of the references is therefore not possible.

It is also not obvious to provide the cup holder of the patent to Wieczorek with a locking tab, since there is no spring which would displace the drawer 40 of the cup holder disclosed in the patent to Wieczorek from the arm rest. There is therefore no requirement to lock the drawer 40 of the cup holder of the patent to Wieczorek in the armrest.

Also, none of the references discloses that the holder 16 during opening of the drawer 14 can be lifted. Wieczorek does not lift a holder, but instead it lowers the foot support 78. If the teaching of the patent to McCall is combined with the teaching of the patent to Wieczorek it will be impossible to arrive at the applicant's invention.

The Examiner indicated that the combination of the patents to McCall and Wieczorek is obvious. He however did not provide any reason why this is so. The invention disclosed in the patent to McCall is developed to prevent an unauthorized opening of a mobile device, for example a typewriter 4, when the device is carried, as explained in column 1, lines 63-66, and column 2, lines 35-41. A person of ordinary skill for the present application is an engineer who is experienced in an automobile manufacture or supply. A person skilled in the art in this case is an engineer in an automobile manufacturing facility or in a supplier facility dealing with manufacture of cup holders as in the reference or in the present patent application. None of the references which deal with a cup holder disclose any knowledge of a problem that the cup holder must be locked against removal in upwardly turnable armrest. In other words, for a person skilled in the art there is no incentive to improve the holding device in this direction. A person of ordinary skill in the art will not have any hint or suggestion to look for a gravity locking device for a cup holder. This is an important reason why the references can not be considered as being pertinent to the applicant's invention.

Regardless of these arguments, a person skilled in the art, for example an engineer who is entrusted with designing cup holders for motor vehicles will not look for any solutions in transportable devices, for example typewriters, suggested by the patent to McCall for designing

improvements in the motor vehicle cup holders. The assumption that it is possible is completely unreasonable. There is no reason to suggest and the Examiner did not provide any reasons why a person of ordinary skill in the art cup holders of motor vehicles would look for solution in typewriters.

It is respectfully submitted that the references applied by the Examiner clearly belong to non analogous art and therefore can not be combined as a matter of obviousness. In connection with this, it is believed to be advisable to cite the decision in re Clay, 23 USPQ 2d 1058, 1060-61 (Fed. Cir. 1992):

"Two criteria have evolved for determining whether a prior art is analogous: 1) whether the art is from the same field of endeavor and 2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.

It is believed to be absolutely clear that as for the first criterion, the patents to McCall and to Wieczorek belong to the art which is definitely not from the same field of endeavor. Cupholders for automobiles have nothing to do with typewriters. As for the second criterion, the McCall disclosure definitely is not reasonably pertinent to the particular problem with which the inventor is involved, in particular to the problem in the cupholders which have been examined and taken care of in the cupholders of automobiles.

Thus, the references clearly belong to a non-analogous art and can not be combined as a matter of obviousness.

The present invention as defined in the main claim should be considered as patentably distinguishing over the art and should be allowed.

The Examiner's attention is also respectfully directed to the features of other claims. Claim 12 specifically defines that the locking member is formed as a bolt located in a hole of the carriage and movable to engage into the opening of the housing when the carriage is pivoted into the position that is not approximately horizontal. Claim 15 defines that the locking member of the gravity locking device is displaceable at a slant relative to a direction of displacement of the carriage. The features of these claims are also not disclosed in the references and can not be derived from them as a matter of obviousness.

It is respectfully submitted that claims 12 and 15 should also be considered as patentably distinguishing over the art and should also be allowed.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,



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